



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Nonconforming Regulation Recommendations & Options

For May 6, 2003 Advisory Committee Meeting

1. Modifications to Nonconforming Structures Located in the Primary Buffer – including recommendations from the March 24-25 meeting related to definitions and mitigation provisions.
2. Modifications to Nonconforming Structures Located in the Secondary Buffer
3. Options for structures that straddle setback lines – New provisions based on March 24-25 discussions
4. Nonconforming Lot Provisions
5. Setback Averaging

1. MODIFICATIONS TO NONCONFORMING STRUCTURES LOCATED IN THE PRIMARY BUFFER (that area which lies between the ordinary high water mark and the secondary buffer)

Guiding Principles for Regulation of Structures Located Entirely Within Primary Buffer Zone
Proposed by Advisory Committee at March 24 – 25, 2003 Meeting

- No expansion on any structures in the primary buffer
- Ordinary maintenance or repair that does not require a permit, does not require mitigation; any repair or modification that requires a permit, requires mitigation measures
- Pre-existing structures will continue to exist until the owner decides to undertake major reconstruction or replacement; at that point, relocation to a compliant location would be required
- A mitigation end point will be defined incorporating credits for good stewardship

Regulations to Implement Guiding Principles

For principal and accessory structures located entirely in the primary buffer, the Department recommends that the following provisions apply:

- Unlimited ordinary maintenance and repairs are allowed, including the repair or replacement of existing structural components; as long as the work does not constitute "major reconstruction" or "replacement."
- Replacement structures must be built in a compliant location
- "Major reconstruction" is not allowed unless a variance is granted or the structure is moved to a compliant location
- Structures may not be expanded
- The primary buffer must be preserved or restored if a permit is required for work on an existing structure
- An area 15-feet wide around the structure may be maintained in lawn

In addition to preserving or restoring the primary buffer, the property owner must also select two of the following mitigation practices, to implement or maintain:

- A 15-foot wide vegetative buffer on both side lot lines
- Infiltration practices - such as rain gardens - to address stormwater runoff
- Removal of accessory structures in the primary buffer and no new accessory structures
- Removal of accessory structures in the secondary buffer and no new accessory structures
- Visually inconspicuous building materials, such as earth-toned materials
- Removal of riprap, concrete seawalls, or artificial sand beaches
- Other mitigation practices listed in the shoreland ordinance that have been approved by the Department

Mitigation End-Point: For future projects that would otherwise require mitigation, if the primary buffer has been preserved or restored and the property owner continues to maintain the primary buffer and at least two of the mitigation measures outlined above, implementation of additional mitigation practices will not be required.

2. MODIFICATIONS TO NONCONFORMING STRUCTURES LOCATED IN THE SECONDARY BUFFER (that area which extends from the primary buffer to the minimum setback line)

Guiding Principles for Regulation of Structures Located Entirely Within Secondary Buffer Zone
Based on Discussion from March 24 – 25, 2003 Meeting

- Allow limited expansion of principal structures located in the secondary buffer
- Ordinary maintenance and repair that does not require a permit, does not require mitigation; any repair, modification or expansion that requires a permit, requires mitigation measures
- Pre-existing structures will continue to exist until the owner decides to undertake major reconstruction or replacement; at that point, relocation to a compliant location would be required
- A mitigation end point will be defined incorporating credits for good stewardship

Regulations to Implement Guiding Principles

For principal and accessory structures located in the secondary buffer, the Department recommends that the following provisions apply:

- Unlimited ordinary maintenance and repairs are allowed; including the repair or replacement of existing structural components; as long as the work does not constitute "major reconstruction" or "replacement."
- Replacement structures must be built in a compliant location
- "Major reconstruction" is not allowed unless a variance is granted or the structure is moved to a compliant location
- A one-time limited expansion for principal structures would be allowed if conditions are satisfied [see options below]
- Pre-existing structures will continue to exist until the owner decides to undertake "major reconstruction" or "replacement" or to expand beyond the limited expansion allowed in the secondary buffer
- The primary buffer must be preserved or restored if a permit is required for work on an existing structure

- Accessory structures may not be expanded

In addition to preserving or restoring the primary buffer, the property owner must also select two of the following mitigation practices, to implement or maintain:

- A 15-foot wide vegetative buffer on both side lot lines
- Infiltration practices - such as rain gardens - to address stormwater runoff
- Removal of accessory structures in the primary buffer and no new accessory structures
- Removal of accessory structures in the secondary buffer and no new accessory structures
- Visually inconspicuous building materials, such as earth-toned materials
- Removal of riprap, concrete seawalls, or artificial sand beaches
- Other mitigation practices listed in the shoreland ordinance that have been approved by the Department

Mitigation End-Point: For future projects that would otherwise require mitigation, if the property owner continues to maintain the primary buffer and at least two of the mitigation measures outlined above, implementation of additional mitigation practices will not be required.

Limited Expansion Options for Principal Structures

To qualify for a one-time limited expansion, the existing principal structure must be a minimum of:

Favor		Option
Yes	No	A. No minimum size requirement
Yes	No	B. 500 square feet
Yes	No	C. 600 square feet
Yes	No	D. 750 square feet
Yes	No	E. Other options as suggested by committee members

For a one-time limited expansion, the existing principal structure may not be expanded beyond:

Favor		Option
Yes	No	A. No expansion allowed
Yes	No	B. 25% of existing footprint, not to exceed 1,500 square feet
Yes	No	C. 50% of existing footprint, not to exceed 1,500 square feet
Yes	No	D. 25% of habitable living area, not to exceed 2,000 square feet
Yes	No	E. 50% of habitable living area, not to exceed 2,000 square feet
Yes	No	F. Cost of addition may not exceed 50% of equalized assessed value of existing structure
Yes	No	G. Other options as suggested by committee members

For a one-time limited expansion, the existing principal structure may be expanded according to the following provisions:

Favor		Option
Yes	No	A. Landward of the existing structure
Yes	No	B. Parallel to, the existing structure
Yes	No	C. A second story addition to the existing structure instead of a horizontal expansion
Yes	No	D. Other options as suggested by committee members

3. OPTIONS FOR STRUCTURES THAT STRADDLE SETBACK LINES

Favor		Option
Yes	No	A. These structures are treated like structures entirely within the most restrictive buffer area.
Yes	No	B. One-time limited expansion on landward side of structures that are partially located within the primary buffer will be allowed only if secondary buffer expansion limits are satisfied and there is no complying location on the property for an enlarged structure
Yes	No	C. The regulations for the zone where the proposed modification is located will prevail including mitigation requirements and for expansions, the secondary buffer size limitations.
Yes	No	D. Other options as suggested by committee members

4. NONCONFORMING LOT PROVISIONS

Guiding Principles for Regulation of Nonconforming Lots

- If the lot existed prior to effective date of the minimum lot size, the lot can be developed if the proposed structure can comply with all other regulations, including applicable setbacks
- If the lot existed prior to the effective date of the minimum lot size, the lot can be developed if first the road setback, and then the OHWM setback are reduced to create a modest-sized building envelope [this setback reduction formula provision is intended to minimize the need for variances]
- Construction on a nonconforming lot requires implementation of mitigation practices
- A mitigation end-point will be defined incorporating credits for good stewardship

Regulations to Implement Guiding Principles

The Department recommends that a pre-existing legally created lot can be developed if the proposed structure can comply with all other regulations, including applicable setbacks. If the lot does not provide a compliant building location, then a formula may be used to reduce roadway and OHWM setbacks to provide a 30-foot deep building envelope, with the application of the following provisions:

- The road setback is first reduced by a maximum of one-half of the total setback
- If necessary, the OHWM setback may then be reduced by a maximum of one-third of the total setback.
- No accessory structures are allowed in the 30-foot deep building envelope except for attached garages
- The primary buffer must be preserved or restored

In addition to preserving or restoring the primary buffer, the property owner must also select two of the following mitigation practices, to implement or maintain:

- A 15-foot wide vegetative buffer on both side lot lines
- Infiltration practices - such as rain gardens - to address stormwater runoff
- Removal of accessory structures in the primary buffer and no new accessory structures
- Removal of accessory structures in the secondary buffer and no new accessory structures
- Visually inconspicuous building materials, such as earth-toned materials
- Removal of riprap, concrete seawalls, or artificial sand beaches
- Other mitigation practices listed in the shoreland ordinance that have been approved by the Department

Mitigation End-Point: For future projects that would otherwise require mitigation, if the property owner continues to maintain the primary buffer and at least three of the mitigation measures outlined above, implementation of additional mitigation practices will not be required.

5. SETBACK AVERAGING

Guiding Principles for Use of Setback Averaging

- New construction that is allowed within the OHWM setback area has the potential for impacts on water quality, wildlife habitat, and natural scenic beauty, the same as, or even greater than, modifications to existing nonconforming structures
- If a property can satisfy the criteria for setback averaging, and the property owner decides to utilize a reduced setback, then the principal structure should be required to meet the same size limitation and mitigation requirements as would apply to the ordinary maintenance, repair or expansion of nonconforming structures

Regulations to Implement Guiding Principles

The Department recommends that to qualify for setback averaging, there must be principal structures within 100 feet on both sides of proposed building site that are built at less than the required setback. The reduced setback may not result in a new structure in the primary buffer and shall be:

Favor		Option
Yes	No	A. The average of the adjacent principal structures
Yes	No	B. The same setback as the adjacent principal structure that is farther from the OHWM
Yes	No	C. No setback averaging allowed

- Size limits shall be consistent with the limited expansion limits for nonconforming structures
- The primary buffer must be preserved or restored

In addition to preserving or restoring the primary buffer, the property owner must also select two of the following mitigation practices, to implement or maintain:

- A 15-foot wide vegetative buffer on both side lot lines
- Infiltration practices - such as rain gardens - to address stormwater runoff
- Removal of accessory structures in the primary buffer and no new accessory structures
- Removal of accessory structures in the secondary buffer and no new accessory structures
- Visually inconspicuous building materials, such as earth-toned materials
- Removal of riprap, concrete seawalls, or artificial sand beaches
- Other mitigation practices listed in the shoreland ordinance that have been approved by the Department

Mitigation End-Point: For future projects that would otherwise require mitigation, if the property owner continues to maintain the primary buffer and at least three of the mitigation measures outlined above, implementation of additional mitigation practices will not be required.

If you would like your comments to be part of the public record for the NR115 rule revision, please provide the following information. Please print legibly.

Date: _____

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Would you like to receive email updates about the NR 115 revision process? ☐ Yes ☐ No

Additional Comments: